AN ORDINANCE ESTABLISHING A RECYCLING PROGRAM FOR NON-RESIDENTIAL PROPERTY IN THE CITY OF NAPLES; ADDING A NEW SECTION 32-40 PROVIDING FOR: TITLE AND CITATION; INTENT AND PURPOSE; CONSTRUCTION AND INTERPRETATION; DEFINITIONS; DESIGNATION OF RECYCLABLE MATERIALS; MINIMUM STANDARDS FOR RECYCLING ON NON-RESIDENTIAL PROPERTY; EXEMPTIONS FROM RECYCLING STANDARDS; EXTRAORDINARY AND INNOVATIVE RECYCLING; AWARDS PROGRAM; RECYCLING EDUCATION AND PROMOTION PROGRAM; EVALUATION OF PROGRAM; RECYCLING SERVICE AGREEMENTS; STANDARDS FOR RECYCLING CONTRACTORS; SELF-HAULING; CITY RECYCLING CENTER; OTHER EXCEPTIONS; INSPECTIONS, ENFORCEMENT, AND PENALTIES; CITY MANAGER TO ADMINISTER; PROVIDING FOR SEVERABILITY; REPEAL OF CONFLICTING ORDINANCES; INCLUSION IN THE CITY'S CODE OF LAWS AND ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 403.706(21), Florida Statutes, authorizes local governments to enact ordinances that require the separation and collection of Recyclable Materials; and

WHEREAS, the City of Naples wishes to increase Recycling in the City of Naples because Recycling will save energy and natural resources, provide useful products, and prove economically beneficial; and

WHEREAS, the City also wishes to increase Recycling in the City of Naples because Recycling will help ensure that the valuable and limited capacity of the City’s Landfill is conserved; and

WHEREAS, the City finds it is necessary for the protection of the public health, safety and welfare of the residents of the City of Naples to require the Recycling of Recyclable Materials generated on Non-Residential Property;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPLES, FLORIDA:

Section 1. That the Code of Ordinances, City of Naples, Florida, is hereby amended by adding a section to be numbered 32-40, which said section reads as follows:

Sec. 32-40. Non-Residential Recycling.

(a) Title and Citation.

This ordinance shall be known and may be cited as the "City Of Naples Non-Residential Recycling Ordinance".

(b) Intent and Purpose.

It is the intent and purpose of this ordinance to promote recycling by:

(1) requiring businesses and institutions in the city to segregate and recycle as many designated recyclable materials as practicable;
(2) establishing educational programs concerning recycling;

(3) providing incentives and awards programs that will make recycling more attractive to the businesses and institutions in the city;

(4) limiting the regulatory impact of this Ordinance on business; and

(5) eliminating potential conflicts between the requirements of this section and other requirements of the city code. By utilizing a balanced combination of incentives and regulations, the city intends to accomplish its recycling goals while minimizing the regulatory requirements in this ordinance. The city also intends to provide sufficient time for the businesses and institutions in the city to comply with the city’s new programs.

(c) Construction and Interpretation.

This section shall be liberally construed in order to carry out effectively the intent and purpose of the ordinance.

(d) Definitions.

All definitions in this section shall be construed in a manner that is consistent with the definitions contained in Section 403.703, Florida Statutes or elsewhere in this code. [See specifically, 1-2 and 44-8] In the case of a conflict or inconsistency with the definitions contained in Section 403.703, Florida Statutes, the statutory definition shall apply.

Certificate of Operation means the license that a contractor must obtain from the city before it can collect recyclable materials in the city.

Collect means to gather or pick up recyclable materials for transport and delivery to a recycling facility.

Contractor means a person who collects or transports recyclable materials from non-residential property for profit.

Customer means an owner or generator that enters into a service agreement with a contractor for recycling services.

Minimal Amount means the amount of solid waste which lawfully may be included in separated recyclable materials. A minimal amount of solid waste is no more than 10 percent, by volume or weight, whichever is more restrictive.

Garbage means all kitchen and table food waste, and animal or vegetative waste that is attendant with or results from the storage, preparation, cooking, or handling of food materials.
Generator means each business, not-for-profit organization and institution (i.e., all persons except individuals) that generates one or more recyclable materials as a result of its activities on non-residential property.

Materials Recovery Facility means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

Non-Residential Property means real property that is located in the city and used primarily for:

a. commerce, including without limitation, offices, stores, restaurants, motels, hotels, recreational vehicle parks, theaters, and service stations;

b. not-for-profit organization use; and

c. institutional uses, including without limitation, governmental facilities, churches, hospitals and schools.

The term non-residential property shall not include non-transient residential units or undeveloped land.

Organic Waste means Garbage and other similar putrescible solid waste, including source separated food waste and food-soiled paper. Organic Waste does not include yard trash.

Primary Recyclable Material means a recyclable material that a person generates on non-residential property in amounts greater than 96 gallons per month.

Recovered Materials means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.

Recovered Materials Processing Facility means a facility engaged solely in the storage, processing, resale, or reuse of recovered materials.

Recyclable Materials means those materials that are capable of being recycled, which would otherwise be processed as solid waste. Specifically included are the following: paper, cardboard, glass, plastic (1 through 7), aluminum, and ferrous metal. If designated by the city, it may include other materials, such as organic waste, or other materials.

Recyclable Materials Container means any box, tub, or other container that is made of metal, hard plastic or other similar material and is suitable for the collection of
Recycling means any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, processed and reused or returned to use in the form of raw materials or products.

Recycling Facility means any facility that recycles recyclable materials, including but not limited to buy back centers, drop-off centers (both permanent and mobile), designated city recycling centers, materials recovery facilities and recovered materials processing facilities.

Residential Unit means a single-family residence, duplex residence and a multi-family residence.

Restaurant means any bar, tavern or other eating or drinking establishment where food or beverages are prepared, served, or sold for profit, either for immediate consumption on or in the vicinity of the premises, or called for or taken out by customers, or prepared prior to being delivered to another location for consumption.

Self-Hauling Certificate means a written certification by an owner or generator confirming that the owner or generator is collecting and transporting recyclable materials to a recycling facility.

Service Agreement means a written agreement between a contractor and an owner or generator concerning the collection of recyclable materials.

Solid Waste means sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded materials, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations.

Substantial Hardship means a demonstrated economic, technological, legal, or other type of hardship.

(e) Designation of Recyclable Materials. The city may designate materials as recyclable materials if it determines that a market exists for such materials and a cost-effective system is in place for recycling such materials. Materials may be deleted from this list of recyclable materials if the city determines that a market no longer exists or a cost-effective system is no longer in place for recycling such materials.

(f) Minimum Standards for Recycling on Non-Residential Property.

(1) Each owner shall:

 a. provide recyclable materials containers on the
(2) Each generator shall recycle all of the primary recyclable materials that it produces. At least once each year, each generator shall:

a. consider the list of recyclable materials designated by the city pursuant to section (f) of this ordinance;
b. consider the types of recyclable materials generated by its activities on non-residential property;
c. identify the primary recyclable materials that the generator produces; and
d. identify (i.e., designate) the primary recyclable materials that the generator will recycle. Thereafter, each generator shall separate the designated primary recyclable materials from the generator's solid waste, and the generator shall place the designated primary recyclable materials in recyclable materials containers for collection.

(3) If a Generator's activities do not produce any primary recyclable materials, the generator shall designate and recycle one or more recyclable materials in the manner described in subsection (f)(2), above, unless the generator is exempt pursuant to subsection (g)(1), below.

(4) Each generator shall coordinate with the owner of the non-residential property where the generator's activities occur, and each owner shall coordinate with the generators on its non-residential property, to ensure that the generator's recyclable materials are taken to a recycling facility.

(5) No person shall dispose of recyclable materials that have been separated from solid waste pursuant to the provisions of subsections (f)(2) or (f)(3), above.

(6) No person shall place solid waste in a recyclable materials container.

(7) No person shall cause litter or a nuisance. Each person shall take all necessary steps to ensure that recycling activities do not cause litter or a nuisance. Each person shall immediately pick up any litter and eliminate any nuisance caused by the person's own activities.

(8) Each owner shall, upon request, provide the city manager with a copy of a service agreement, self-hauling certificate, or other document, such as a receipt from a
recycling facility, demonstrating that the primary recyclable materials generated on the owner's non-residential property are being taken to a recycling facility. The service agreement, self-hauling certificate, or other document shall be available for inspection by the city manager at the owner's non-residential property during normal business hours. The owner also shall mail or deliver these documents to any generator located on the owner's non-residential property, within 14 days, if the generator requests the documents.

(9) Each generator shall, upon request, provide the city manager with a copy of a service agreement, self-hauling certificate, or other document demonstrating that the generator's primary recyclable materials are being taken to a recycling facility. The service agreement, self-hauling certificate, or other document shall be available for inspection by the city manager at the generator's non-residential property during the generator's normal business hours.

(10) An owner may satisfy its obligations under this ordinance by performing the required activities itself or by using the services of a contractor or other person who complies with the requirements of this ordinance. However, the owner shall be responsible for ensuring and demonstrating its compliance with the requirements of this ordinance.

(11) A generator may satisfy its obligations under this ordinance by performing the required activities itself or by using the services of a contractor or other person who complies with the requirements of this ordinance. However, each generator shall be responsible for ensuring and demonstrating its compliance with the requirements of this ordinance.

(g) Exemptions from Recycling Standards.

(1) A generator shall be exempt from the requirements in section (g) of this ordinance if the generator uses no more than one container for the disposal of its solid waste, the container's capacity is no greater than 96 gallons, and the contents of the container are collected no more than 2 times per week.

(2) A generator shall not be required to recycle a recyclable material if the generator demonstrates to the city manager that there is no collection service or other cost-effective system available for recycling such material.

(3) An owner shall be exempt from the requirements in Section (g) of this Ordinance if:
   
a. all of the generators on the owner's non-residential property are exempt from or not required to comply with the provisions of section (g); or
   
b. Primary recyclable materials are not being generated
by any activities occurring on the owner's non-residential property.

(h) Extraordinary and Innovative Recycling.

(1) All owners and generators, including those who are exempt from some or all of the requirements in this ordinance, are encouraged to recycle all of their recyclable materials, especially aluminum cans, paper, and cardboard.

(2) Owners and generators are encouraged to work with the city to develop new and innovative methods to recycle other recyclable materials, such as organic waste.

(i) Awards Program for Recycling on Non-Residential Property.

The city manager is hereby authorized to establish and implement an awards program to recognize owners and generators in the city who implement exceptional or innovative recycling programs for non-residential property.

(j) Recycling Education and Promotion Program.

The city manager is hereby authorized to establish and implement a recycling education and promotion program for owners and generators in the city. The education and promotion program may include, but is not limited to, public workshops, public service announcements, multi-media advertising, and direct mailings concerning the methods and benefits of recycling on non-residential property.

(k) Evaluation of Non-Residential Recycling Program.

As needed, the city manager shall provide a report to the city council concerning the city's recycling program for non-residential property. The report shall address the effectiveness of the city's recycling program for non-residential property, the general costs and benefits associated with this program, and any changes that should be implemented to improve the effectiveness of the program.

(l) Recycling Service Agreements.

A contractor shall provide a written service agreement to a customer before the contractor begins to collect that customer's recyclable materials. The service agreement shall describe the services to be provided by the contractor, the fees to be paid by the customer, and the other terms of the parties' agreement.

(m) Standards for Recycling Contractors.

(1) No person may collect or transport recyclable materials in the city for profit unless such person has obtained a certificate of operation from the city. However, a certified recovered materials dealer, as defined in Section 403.7046, Florida Statutes, is not required to obtain a
certificate of operation before engaging in business in the city.

(2) A not-for-profit organization is required to obtain a certificate of operation before collecting or transporting recyclable materials in the city, but the city manager is authorized to waive the fee for review of the application and issuance of the certificate.

(3) Any person may file an application with the city manager for a certificate of operation. The application shall be submitted on a form prepared by the city manager. The applicant shall provide the information and documentation that is requested by the city manager, including but not limited to the following:

a. The name, address and telephone number of the applicant;
b. A description of the vehicles that the applicant will use to collect recyclable materials, including the make, model, and serial number of each vehicle; and
c. Certificates of insurance demonstrating that the applicant has the following minimum insurance coverage: commercial general liability insurance of at least $1,000,000; business automobile liability insurance of at least $1,000,000; workers' compensation insurance of at least the statutory limits, unless otherwise provided by state law; and umbrella liability insurance of at least $2,000,000. The certificates of insurance shall state that the city will receive at least 30 days' written notice before cancellation or reduction of coverage. The certificates of insurance shall indicate that the city is a named insured in all of the insurance policies required by this ordinance, with the exception of workers compensation.
d. A written statement certifying that the applicant has reviewed and will comply with all of the requirements in the certificate of operation and this ordinance.

(4) If the city manager determines that the applicant complies with the terms of this ordinance and all applicable laws, the city manager shall grant a certificate of operation. The city manager shall deny an application for a certificate of operation if the city manager determines that the applicant does not comply with the terms of this Ordinance or other applicable law. The city manager may revoke a certificate of operation if the city manager determines, after providing notice and an opportunity for a hearing, that a contractor has violated the provisions in a certificate of operation or any applicable law.

(5) The city manager will provide a standard form that will be used as the city's certificate of operation. The certificate of operation shall contain the conditions and limitations that are deemed appropriate by the city. The certificate of operation shall remain in effect for a
period of 1 year, unless the city approves a longer duration by resolution.

(6) A contractor shall provide each of its customers with recyclable materials containers that are sufficient to accommodate the quantity and types of recyclable materials that will be recycled by the customer.

(7) A contractor shall conduct all of its activities in accordance with all applicable laws and best management practices. A contractor's vehicles, equipment and containers shall be kept in a clean and well-maintained condition.

(8) A contractor shall not take a customer's recyclable materials to a landfill or other site for disposal, unless the contractor has received an exemption pursuant to Section (g) of this ordinance.

(9) Unless exempt from this requirement pursuant to Chapter 62-722, Florida Administrative Code, a contractor shall provide quarterly reports to the city identifying, at a minimum, the types and amounts of recyclable material it collected, and each recycling facility to which the recyclable material was taken. The city manager may require the contractor to provide such other information as the city manager reasonably determines is necessary, provided such request is consistent with the provisions of Chapter 62-722, Florida Administrative Code.

(n) Self-Hauling.

(1) If an owner collects the recyclable materials generated on its non-residential property and transports those materials to a recycling facility, without using a contractor, the owner shall, upon request, prepare a self-hauling certificate for the city manager.

(2) If a generator collects and transports its recyclable materials to a recycling facility, without using a contractor, the generator shall, upon request, prepare a self-hauling certificate for the city manager.

(3) The city manager shall approve a standard form that shall be used as a self-hauling certificate. At a minimum, the owner or generator shall provide the following information in the self-hauling certificate:

a. The name, address and telephone number of the owner or generator that is signing the self-hauling certificate;

b. The address of the non-residential property where the recyclable materials are generated;

c. The names of the generators that are transporting recyclable materials pursuant to the self-hauling certificate;

d. A brief description of the activities or businesses
that are generating the recyclable materials;
e. A list of the types of recyclable materials that are being transported;
f. For each type of recyclable material, the amount that is being taken from the non-residential property to a recycling facility each month;
g. The name and address of the recycling facility; and
h. The occupational license number(s) for the non-residential property.

(4) The self-hauling certificate shall contain a written statement, signed by the owner or generator, certifying that the owner or generator is in compliance with the requirements of this ordinance.

(5) The city manager may restrict or prohibit self-hauling by a person if the city manager determines, after providing notice and an opportunity for a hearing, that the person’s self-hauling activities violate the provisions of this ordinance or any other applicable law.

(o) City Recycling Center.

(1) The city may establish a recycling center for the benefit of the community. When established, the city may impose conditions and limitations upon any person that wishes to use the city's recycling center, including limitations on the types and amounts of recyclable materials that will be accepted at the recycling center. The city also may charge fees for the use of its recycling center. The conditions, limitations, and fees applicable to the recycling center shall be established by resolution of the city.

(2) A contractor shall not deliver recyclable materials or solid waste to the city's recycling center, unless the deliveries are approved in advance by the city manager.

(p) Exceptions-Administrative.

(1) The city manager may grant an administrative exemption from the requirements in this section when an owner, generator or other person demonstrates that:

a. the application of the ordinance would create a substantial hardship, or

b. due to site specific conditions, the owner, generator or other person cannot simultaneously comply with this section and the provision of any other section of the city code, county regulations or general law.

(2) An application for an administrative exemption pursuant to Subsections (g)(1) or (g)(2), above, shall be submitted to the city manager on a form prescribed by the City manager.
(g) Inspections, Enforcement and Penalties.

(1) The city manager is authorized to conduct inspections on non-residential property for the purpose of determining whether a person is in compliance with the requirements of this ordinance. The city manager also is authorized to inspect any vehicle, equipment or container used to collect or transport recyclable materials in the city for the purpose of ensuring that the vehicle, equipment or container is not producing litter or leaking liquids or other residuals during transport.

(2) It shall be prima facie evidence of a violation of this ordinance if an owner or generator fails to have a recyclable materials container in use on the owner's or generator's non-residential property.

(r) Penalties and Enforcement.

Any person violating this section shall be subject to the enforcement and penalties contained in Section 1-15 of this code.

(s) Exceptions.

The city manager is hereby granted the authority to administer this program and to resolve any questions or disputes concerning the proper interpretation and application of this ordinance. The decision of the city manager is final agency action and no appeal is allowed.

Section 2. If any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 3. That all sections or parts of sections of the Code of Ordinances, City of Naples, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall take effect immediately upon adoption at second reading, except Section 32-40 (r) shall take effect 180 days thereafter.

APPROVED AT FIRST READING THIS 16TH DAY OF APRIL, 2008.
ORDINANCE 08-12051


Attest:
Tara A. Norman, City Clerk

Approved as to form and legality:
Robert D. Pritt, City Attorney

Date filed with City Clerk: 5-21-08